

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

BRYANT PERALTE, an infant by his m/n/g RAMONA
GARCIA & RAMONA GARCIA individually,

ANSWER

Plaintiffs,

07 CV 6148 (RJH)

-against-

Jury Trial Demanded

THE CITY OF NEW YORK, POLICE OFFICERS JOHN
ROE 1-10,

Defendants.

-----X

Defendant THE CITY OF NEW YORK (the "City" or "defendant"), by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its answer to the complaint, respectfully alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph 1 of the complaint, except admits that plaintiffs purport to bring this action as stated therein.
2. Denies the allegations set forth in paragraph 2 of the complaint, except admits that plaintiffs purport to base jurisdiction as stated therein.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the complaint.
5. Admits the allegations set forth in paragraph 5 of the complaint.
6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the complaint as it pertains to unidentified individuals.

7. Denies the allegations set forth in paragraph 7 of the complaint, except admits that a document purporting to be a notice of claim by plaintiff Bryant Peralte was received by the City.

8. Denies the allegations set forth in paragraph 8 of the complaint, except admits that no monies have been paid to plaintiffs and no payments have been made by defendant City.

9. Denies the allegations set forth in paragraph 9 of the complaint, except admit that this action was commenced against defendant on the date indicated in the Court Clerk's docket.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of the complaint.

11. Denies the allegations set forth in paragraph 11 of the complaint.

12. Denies the allegations set forth in paragraph 12 of the complaint.

13. Denies the allegations set forth in paragraph 13 of the complaint.

14. In response to the allegations set forth in paragraph 14 of the complaint, defendant repeats and realleges the responses set forth in paragraphs 1 through 13 inclusive of its answer, as if fully set forth herein.

15. Denies the allegations set forth in paragraph 15 of the complaint.

16. Denies the allegations set forth in paragraph 16 of the complaint.

17. In response to the allegations set forth in paragraph 17 of the complaint, defendant repeats and realleges the responses set forth in paragraphs 1 through 16 inclusive of its answer, as if fully set forth herein.

18. Denies the allegations set forth in paragraph 18 of the complaint.

19. Denies the allegations set forth in paragraph 19 of the complaint.
20. Denies the allegations set forth in paragraph 20 of the complaint.
21. In response to the allegations set forth in paragraph 21 of the complaint, defendant repeats and realleges the responses set forth in paragraphs 1 through 20 inclusive of its answer, as if fully set forth herein.
 22. Denies the allegations set forth in paragraph 22 of the complaint.
 23. Denies the allegations set forth in paragraph 23 of the complaint.
 24. In response to the allegations set forth in paragraph 24 of the complaint, defendant repeats and realleges the responses set forth in paragraphs 1 through 23 inclusive of its answer, as if fully set forth herein.
 25. Denies the allegations set forth in paragraph 25 of the complaint.
 26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 of the complaint.
 27. Denies the allegations set forth in paragraph 27 of the complaint.
 28. Denies the allegations set forth in paragraph 28 of the complaint.
 29. Denies the allegations set forth in paragraph 29 of the complaint.
 30. In response to the allegations set forth in paragraph 30 of the complaint, defendant repeat and reallege the responses set forth in paragraphs 1 through 29 inclusive of their answer, as if fully set forth herein.
 31. Denies the allegations set forth in paragraph 31 of the complaint.
 32. Denies the allegations set forth in paragraph 32 of the complaint.

33. In response to the allegations set forth in paragraph 33 of the complaint, defendant repeats and realleges the responses set forth in paragraphs 1 through 32 inclusive of its answer, as if fully set forth herein.

34. Denies the allegations set forth in paragraph 34 of the complaint.

35. Denies the allegations set forth in paragraph 35 of the complaint.

36. Denies the allegations set forth in paragraph 36 of the complaint.

37. In response to the allegations set forth in paragraph 37 of the complaint, defendant repeat and reallege the responses set forth in paragraphs 1 through 33 inclusive of its answer, as if fully set forth herein.

38. Denies the allegations set forth in paragraph 38 of the complaint.

39. Denies the allegations set forth in paragraph 39 of the complaint.

40. In response to the allegations set forth in paragraph 40 of the complaint, defendant repeats and realleges the responses set forth in paragraphs 1 through 39 inclusive of its answer, as if fully set forth herein.

41. Denies the allegations set forth in paragraph 41 of the complaint.

42. Denies the allegations set forth in paragraph 42 of the complaint.

43. Denies the allegations set forth in paragraph 43 of the complaint.

44. In response to the allegations set forth in paragraph 44 of the complaint, defendant repeats and realleges the responses set forth in paragraphs 1 through 43 inclusive of its answer, as if fully set forth herein.

45. Denies the allegations set forth in paragraph 45 of the complaint.

46. Denies the allegations set forth in paragraph 46 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

47. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

48. The City has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

49. To the extent the complaint alleges any claims against the City arising under state law, such claims are barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

50. Punitive damages are not available against the City of New York.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

51. Any injury alleged to have been sustained resulted from plaintiffs' own culpable or negligent conduct, or from that of others, and was not the proximate result of any act of the defendant.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

52. There was probable cause for plaintiffs' arrest, prosecution and detention.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

53. There was probable cause to search and detain plaintiffs.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

54. Plaintiffs provoked any use of force by resisting arrest and/or failing to obey lawfully issued orders.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

55. Any force used to arrest plaintiffs was reasonable under the circumstances.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

56. This action is barred in whole or in part by the doctrines of res judicata and/or collateral estoppel.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

57. This action is barred in whole or in part by the applicable limitations period.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

58. Plaintiffs have failed to comply with Section 50 of the Municipal Law.

WHEREFORE, defendant THE CITY OF NEW YORK requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 22, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant THE CITY OF NEW
YORK
100 Church Street, Room 3-159
New York, New York 10007
(212) 788-8698

By:

Steve Stavridis

(By ECF)

TO: Michael Colihan, Esq.
Attorney for Plaintiffs
44 Court Street – Suite 911
Brooklyn, New York 11201
(718) 488-7788